**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**SIDE JURISDICTION**
**CRIMINAL WRIT PETITION NO.2286 OF 2006**

Shri Sanjay Jagannath Patil ...Petitioner.
V/s.
Mrs.Manisha Ulhas Pradhan & Anr. ...Respondents.

Shri S.J.Rairkar, adv. for the Applicant.
Shri Niranjan Mundargi, adv. for the Respondent No.1.
Smt.M.H.Mhatre, APP for the Respondent/State.

**WITH**
**CRIMINAL REVISION APPLICATION NO.196 OF 2006**

Shri Ulhas Chandrakant Pradhan ..Applicant.
V/s.
State of Maharashtra & Ors. ..Respondents.

Shri Niranjan Mundargi, adv. for the Applicant.
Smt.M.H.Mhatre, APP for the Respondent/State.

**CORAM: J.H.BHATIA, J.**
**DATE : 16th March, 2007.**

**P.C.:**

1. Rule.

2. Rule made returnable forthwith in both the matters and with consent of the learned counsel for the parties, matters are taken up immediately for final hearing.

3. Both these matters can be disposed off by the common order as the facts are similar and accused in both the cases is same and the complainants in the cases

are husband and wife.

4. To state in brief, Dr.Sanjay Patil, who has filed the writ petition is the accused in Criminal Case No.321/S/2003 filed by the respondent no.1 Manisha Pradhan. He is also co-accused in C.C.No.311/S/2003 filed by Ulhas Pradhan, who is applicant in Criminal Revision Application No.196 of 2006. For the sake of convenience Dr.Sanjay Patil may be referred as the accused and the applicant Ulhas Pradhan and the respondent no.1 Manisha Pradhan may be referred as the complainants. The accused had purchased a bungalow situated at Pune from the complainants and towards the part payment of the consideration, the accused issued cheques of Rs.5 lakh each in favour of the two complainants at Pune. The cheques were presented for encashment by the complainants at Pune. However, both the cheques were dishonoured. Therefore, on behalf of the complainants their advocate, Mr.Vipradas, who is also resident and practising at Pune, issued notices to the accused on 4th June, 2003. Inspite of receipt of the notices, the accused failed to make the payment within the stipulated period. Therefore, both the complainants filed separate complaints in the Court of Metropolitan Magistrate, Bombay. The accused preferred revision applications challenging the issuance of

process by the Metropolitan Magistrate on the ground that no part of transaction had taken place within the local limits of the Metropolitan Magistrate and therefore, it lacked territorial jurisdiction to take cognizance of the matter. Revision Application No.565 of 2005 challenging the jurisdiction in Criminal Case No.321(S) of 2003 filed by Mrs.Manisha came to be rejected and that order is challenged by the accused in Writ Petition No.2286 of 2006. However, Revision Application No.955 of 2005 against issuance of process in criminal case no.311-S-2003 filed by Ulhas Pradhan was however, allowed holding that the Metropolitan Magistrate had no jurisdiction. Hence, the complainant Ulhas Pradhan has filed Revision Application No.196 of 2006.

5. Thus, in spite of facts being the same in both the cases, two conflicting orders have been passed by the Sessions Court.

6. The learned counsel for both the parties placed reliance upon **K.Bhaskaran v. Sankaran Vaidhyan Balan & Another (1999) 7 Supreme Court Cases 510** in support of their respective contentions. According to Mr.Mundargi, the learned counsel for the complainants, the Metropolitan Magistrate at Bombay has a territorial

jurisdiction, while according to Mr.Sanjeev Rairkar, the learned counsel for the accused, the Metropolitan Magistrate has no territorial jurisdiction. Section 177 of the Cr.P.C. provides that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 provides that when it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be enquired into or tried by a Court having jurisdiction over any of such local areas. After referring to the relevant provisions of Sections 177, 178 and 179 of the Cr.P.C. in **K.Bhaskaran**, Their Lordships observed as follows in paragraph 14.

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

Their Lordships further observed that it is not necessary that all the above acts should have been perpetrated in the same locality and it is possible that each of those five acts could be at 5 different localities. In paragraph 16, Their Lordships observed as follows:

> 16. Thus it is clear, if the five different acts were done in five different localities any of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits to which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

From this it is clear that if any of the five acts referred to in paragraph 14 of the said judgment is done in any local area, the Magistrate having territorial jurisdiction over that local area may take cognizance of the matter. Keeping in mind this legal position, we have to find out whether any of the above stated 5 acts was done within the local limits of the Metropolitan Magistrate, Bombay in the present matters. Admittedly,

the sale transaction between the parties took place at Pune and the accused had drawn cheques in favour of the complainants at Pune. The complainants presented the cheques to the drawee bank at Pune. The cheques were returned unpaid by the drawee bank at Pune. Notice was issued by the advocate for the complainants from Pune to the accused residing at Pune and inspite of the notice, accused failed to make payment at Pune.

7. Mr.Mundargi, the learned counsel for the complainants contends that the complainants have shifted from Pune to Vile Parle area in Bombay and in the notice issued by the advocate it was mentioned that the advocate was instructed by his clients residing at Vile Parle, Bombay. In paragraph 4 of the said notice, the accused was called upon to effect the payment to the complainants being the amounts payable against the said cheques. According to Mr.Mundargi as the complainants were residing at Bombay and the payment was not made to the complainants, it may be held that failure to make the payment was within the local limits of the Metropolitan Magistrate, Bombay. It is difficult to accept this contention. The notice only informs that the advocate was instructed by the complainants residing at Bombay. The notice nowhere required that the payment should be made at Bombay nor there was any agreement

between the parties to make the payment at Bombay. Taking into consideration all the facts, it appears that the payment was to be made by the accused after receipt of the notice at Pune and his failure also occurred at Pune. Therefore, none of the five acts as referred to in paragraph 14 of **K.Bhaskaran** took place or was done within the local limits of the Metropolitan Magistrate, Mumbai. Therefore, it had no jurisdiction to entertain the complaints.

8. For the aforesaid reasons, Revision Application No.196 of 2006 is hereby dismissed and Writ Petition No.2286 of 2006 is hereby allowed. In both the matters, the concerned Metropolitan Magistrate shall return the complaints to the complainants and the complainants may present the same before the competent judicial Magistrate at Pune within 3 weeks from the date when the complaints are returned to them and if the complaints are so presented before the competent judicial Magistrate within the period of 3 weeks, the question of limitation will not be raised.

9. Rule discharged in Revision Application No.196 of 2006.

10. Rule made absolute in Writ Petition NO.2286 of

2006.

**(J.H.Bhatia,J.)**